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2 A. Did you say the acceleration and?

3 Q. And, yes.

4 A. Thank you.

5 Q. Yes, I did. Yes. Those are the --
6 there aren't any other dire consequences that
7 you're aware of?

8 A. Not that I know of. And loss of
9 consolidation, but that's part of the loss of the
10 tax-paying arrangement.

11 Q. And so far as you're aware, Marvel was
12 restricted in its ability to make and finance this
13 acquisition by the terms of its own outstanding
14 debt facilities; is that correct?

15 A. Was restricted in using it to -- in the
16 way it could do it?

17 Q. In it's ability to make a financial
18 transaction by its own --

19 MR. FRIEDMAN: Can I have the whole
20 question read back, please?

21 MR. CLARK: I will just repeat it.

22 Q. So far as you're aware, Marvel was
23 restricted in its ability to make and finance that
24 Skybox acquisition by the terms of its own
25 outstanding debt facilities; is that your

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2 understanding?

3 A. It was -- my understanding is that there
4 were restrictions. I don't think there were
5 exactly the same restrictions as applied to the --
6 to Marvel because of the indenture, because of the
7 note indenture.

8 Q. Right. When you say that applied to
9 Marvel, you're not retracing your testimony from
10 this morning, are you? You agree that Marvel --

11 A. I'm saying --

12 Q. -- as a technical legal matter was not
13 bound by --

14 A. I did. But I also say, de facto, they
15 were bound. They submitted themselves to the
16 covenants and treated them as binding on them.
17 I've said that before.

18 Q. Sure.

19 A. Each time you say one thing, I say the
20 other.

21 Q. And let's flesh that out a little bit.
22 Let's say that Marvel, for whatever reason, went
23 out and issued stock, tried to issue stock in
24 connection with this transaction, you know, \$150
25 million worth of stock. And noteholders rushed

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2 into the court of chancery, at the court of equity
3 and said, I want a preliminary injunction against
4 Marvel from issuing that stock because that is a
5 violation of the covenants in my notes.

6 What would the court say, do you think?
7 As a practical matter, what would the court say in
8 that circumstance?

9 A. They'd go in and say it's a tortuous
10 interference with an advantageous contractual
11 relationship which they know all about and are
12 subject to. And if it weren't so, they would have
13 made disclosure in their SEC filings that they were
14 prepared not to comply with these obligations
15 instead of suggesting, as they have, that they are
16 subject to them.

17 Q. So Marvel would be enjoined --

18 A. It would be a complicated decision.

19 Q. And they'd be enjoined because of a
20 theory of tortuous interference?

21 A. That's one theory, yeah.

22 Q. But they wouldn't be enjoined because of
23 a theory that they were contractually bound by
24 those covenants, correct? That's your
25 understanding?

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2 A. I think that's probably right.

3 Q. Now, you said here, you mentioned here
4 about Perelman's strong interest in avoiding a
5 stock offering. And then you used the phrase, Even
6 if it was clearly the best alternative for Marvel
7 and all of its shareholders.

8 You're not contending, as an expert, are
9 you, that issuing stock in this acquisition was, in
10 fact, the best alternative for Marvel to finance a
11 deal, are you?

12 A. I don't know.

13 Q. You don't have the expertise to form a
14 conclusion about that, do you, about whether that
15 was the best alternative?

16 A. Based on what I now know, I don't have
17 the expertise.

18 Q. Presumably, would you agree that the
19 financial advisors to Marvel in connection with the
20 Skybox deal would have been in a better position
21 with better expertise than you to make that
22 judgment?

23 A. Who?

24 Q. The financial advisors who were advising
25 Marvel in connection with that transaction.

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MR. FRIEDMAN: In the actual

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transaction?

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MR. CLARK: Yes.

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A. I don't know who the financial advisors

6

were.

7

Q. So, perhaps they wouldn't have been in a

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better position than you are today to make that

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judgment?

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A. If they were -- if they had been

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retained by Mr. Perelman and had relationships with

12

Mr. Perelman other than solely as a director of

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Marvel, I don't care how good they are, they would

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be conflicted and therefore their judgments would

15

be suspect.

16

Q. Do you know -- you have no factual basis

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to believe that Mr. Perelman hired Marvel's

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financial advisors on that transaction?

19

A. I don't know if there were financial

20

advisors on the transaction.

21

Q. If Marvel management made the

22

judgment -- well, if Marvel management and the

23

Marvel board of directors made the judgment in 1995

24

that bank debt financing was the best alternative

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for Marvel and its shareholder in making the Skybox

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2 acquisition, you have no factual basis or financial
3 expertise to dispute that conclusion; is that
4 correct?

5 A. That's correct. All I was saying was
6 that the negative covenants reduced the options
7 available to be considered by any financial
8 advisors that might have been retained.

9 Q. Now, you refer in the last paragraph to
10 the answer to question 2, to the possibility of
11 creating a committee that consisted solely of
12 independent Marvel directors. That's what in the
13 trade we call a special committee. Do you
14 understand that phrase, special committee?

15 A. Yes, I understand the phrase. I don't
16 think it's necessarily a term that applies to --
17 exclusively to what I'm talking about.

18 Q. Well, are you aware, based on your
19 review of all the things you looked at, the work
20 you did in this case, are you aware of any
21 instances in which the Marvel board of directors
22 did designate such a committee of independent
23 directors to deal with proposals or issues
24 involving Mr. Perelman and potential conflicts of
25 interest? Are you aware that that happened?

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2 A. Well, we touched on that earlier, didn't
3 we?

4 Q. We did.

5 A. And I think I read in some -- in a press
6 conference or a press release or some kind of
7 release relating to the consideration of the
8 Andrews offer that there was an intention -- an
9 intention to create -- I don't know if it was
10 created -- a committee of independent directors to
11 consider that offer.

12 Q. Which I think you said earlier would
13 be -- would have been the appropriate thing to do
14 under the circumstances?

15 A. I do think so.

16 Q. Were you aware that there was a tender
17 offer by Mr. Perelman for Marvel stock in 1993?
18 Are you aware of that transaction?

19 A. That's where he got to his 80 percent.

20 Q. That's correct.

21 A. I'm vaguely aware of it.

22 Q. Are you aware that there was a special
23 committee of independent directors designated by
24 the board?

25 A. I'm not.

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2 Q. If there was, that would have been the
3 appropriate thing to do under the circumstances?

4 A. Yes.

5 Q. Are you aware --

6 A. Was there?

7 Q. Yes, there was.

8 Based on your work and your review in
9 this case, are you aware of any transaction to
10 which Marvel was a party or proposed to be a party,
11 where Mr. Perelman was on the other side and the
12 Marvel board didn't establish a special committee
13 of independent directors to deal with the
14 situation?

15 A. The issuance of these notes, these three
16 tranches of notes.

17 Q. Well, but you told me that Marvel wasn't
18 a party to those contracts, right?

19 A. Well, yes. We don't need to reiterate
20 what we've been saying.

21 Q. Right. So, are you aware of any
22 transaction in which Marvel was a party or proposed
23 to be a party and Mr. Perelman was on the other
24 side of the transaction in which the Marvel board
25 of directors didn't establish a special committee

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2 of independent directors to deal with the
3 conflict -- the theoretical potential conflict
4 situation?

5 Are you aware of any instance where that
6 occurred?

7 A. I'm not.

8 Q. Now, in your report, you bring together
9 questions 3 and 4 -- or you answer questions 3 and
10 4 together. I'd like to explore those a little
11 bit.

12 The first question talks about you being
13 a director and learning that the holding companies
14 were going to issue the notes on the terms --

15 A. Yes.

16 Q. -- that they eventually were and you
17 were asked if you thought you had -- would have had
18 an obligation to take any action and try and
19 determine whether the issuance of the notes could
20 have any affect on Marvel.

21 And then the second question talks about
22 whether it would have been appropriate for
23 Perelman, Bevins and Drapkin to be involved in
24 discussions between Marvel and the holding
25 companies since they were on both boards, right?

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2 A. Yes.

3 Q. If I understand the first part of your
4 answer, what you'd have done in those circumstances
5 is to ask Mr. Perelman to disclose all material
6 facts on his conflict in the transactions to the
7 Marvel directors, right?

8 A. Right.

9 Q. Do you know whether those facts were
10 indeed disclosed to or known by the Marvel
11 directors at the time of these transactions?

12 A. I don't know. I know that there is no
13 record of this. In the minutes, there seems to be
14 no record of the note issuance plan being presented
15 to the board for consideration.

16 Q. But if the directors who actually served
17 at this time said they were aware of those facts,
18 they knew that Mr. Perelman was planning these
19 transactions, they knew Mr. Perelman obviously
20 owned 80 percent of the company or 60 percent in
21 the first instance, you'd have no basis to dispute
22 that?

23 A. If they knew, you're saying --

24 Q. Yeah, if the directors knew --

25 A. -- would I have a basis for saying they

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2 didn't know?

3 Q. Right.

4 A. No, I'd have no basis for disputing it.
5 What I am saying is that if they were performing
6 their duties as independent directors correctly,
7 they wouldn't have allowed this transaction to go
8 forward the way it did.

9 Q. Now, in the third paragraph to that
10 answer, you talk about the security for the notes,
11 including these negative covenants, wherein those
12 issuers -- these are the holding companies, right?

13 A. Yes.

14 Q. -- would agree to exercise their power
15 to restrict Marvel in a variety of ways.

16 What power did the note issuers have to
17 restrict Marvel; what are you talking about there?

18 A. Well, Perelman owned the issuers 100
19 percent. He controlled them. So they were simply
20 instrumentalities of Mr. Perelman.

21 Q. Right.

22 A. And they had agreed to cause Marvel,
23 their subsidiary, to comply with these covenants.
24 So, I'm talking about the power that they have as
25 controlling shareholders to cause compliance.

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2 Q. And what is that power? What does a
3 shareholder have in terms of power to cause a
4 corporation to do what it wants if the corporation
5 and its board otherwise doesn't want to do it?
6 What is that power?

7 A. Well, they can remove the directors and
8 put in a new team of directors.

9 Q. That's all they can do, isn't it? Isn't
10 that the power you're referring to, the power to
11 remove and replace the board?

12 A. Well, that's the ultimate power. The
13 intermediate power is if -- if the board doesn't
14 want to lose their jobs, they go along with what
15 they're being told to do.

16 Q. Isn't that the same thing you just said?
17 Isn't that removing and replacing the
18 board; that's the power that a majority shareholder
19 has to cause the board of directors of a
20 corporation to do what he wants them to do?

21 A. Ultimately, yes.

22 Q. And there isn't any other power that you
23 were referring to here?

24 MR. FRIEDMAN: Where's the here in that
25 question?

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MR. CLARK: Power to restrict Marvel in

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a variety of ways.

4

Q. That's the power, right?

5

A. Yes. I think that's --

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Q. Yeah. I just want to make sure I've

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covered the water front. To your knowledge, was

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this power, that is, the power to remove and

9

replace members of the board of directors of

10

Marvel, ever threatened or exercised to obtain

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Marvel's approval or acquiescence of the notes?

12

A. I don't know.

13

Q. You don't know if it was?

14

A. No. I mean, what -- what is clear, I

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think, is one, the Marvel board did not consider

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these transactions and approve or disapprove them

17

or negotiate over them.

18

What is clear beyond that is that

19

despite the absence of that, the Marvel executives

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and legal counsel and auditor participated fully in

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achieving the offering of these three tranches of

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notes, including giving, in the case of the legal

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counsel, giving an opinion which was -- is in my

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experience, substantially equivalent to an opinion

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that you would give and be asked to give if you

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2 were issuing the notes yourselves.

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4 I mean, in other words, they
5 participated fully in a financing that had all the
6 earmarks of a financing that they were engaged in
7 themselves.

7

8 So, somehow that happened; is their
9 cooperation, and its very full cooperation was
10 achieved without the board taking any formal action
11 or getting involved. I don't know what went on to
12 make that happen, but it happened.

12

13 Q. Right. Just, my question is, do you
14 have any basis in fact to assert that Mr. Perelman
15 and the holding companies exercised their power to
16 threaten or actually remove or replace directors in
17 order to obtain all that cooperation you just
18 talked about?

18

19 A. I have no evidence, except the -- I have
20 no evidence except the facts that I just recited,
21 which indicate the power was being exercised. And
22 the reason for that is that this transaction had
23 zero benefit for Marvel and total benefit for one
24 individual, Mr. Perelman. And yet this company,
25 which got nothing out of it, cooperated as fully as
26 they would have been involved in a note offering

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2 where they got the proceeds themselves.

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4 So that has to be explained. And so
5 it's all circumstantial evidence to lead me to
6 conclude that the control I'm describing was
7 exercised in some way. I'm just looking at the
8 results, not the process.

8

9 Q. Now, if the directors, the independent
10 directors of Marvel were to testify that, in fact,
11 they were never -- knew all the facts, they were
12 never threatened, hondled, cajoled or approached in
13 any way, shape or form to cause Marvel to do or not
14 do anything with respect to these notes, you
15 wouldn't have any basis to dispute that, would you?

15

16 A. I'd only have the result.

16

17 Q. Other than the result, you have no facts
18 to suggest that anybody was threatened with this
19 power that you say the majority shareholder had?

19

20 A. It's a res ipse loquitor, if I remember
21 that from my practice.

21

22 Q. Is the answer to my question, yes, you
23 have no evidence to support any assertion that that
24 power -- I withdraw it.

24

25 MR. FRIEDMAN: Obviously the transcript
should reflect everything that was said to the

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2 extent you transcribed it.

3 MR. CLARK: Sure, sure, of course.

4 THE WITNESS: To the extent you got it.

5 Q. Okay. Now, going over to the fourth
6 paragraph -- going over to the fourth paragraph of
7 your answer to questions 3 and 4, start again with
8 the reference to the power, the share power.

9 A. Share power.

10 Q. That's the same thing, just the power to
11 elect and remove directors?

12 A. That's right.

13 Q. And you know as a fact that that power
14 was not actually exercised, right? You saw nothing
15 in the record to indicate that a director was
16 removed or replaced by Mr. Perelman in connection
17 with the issuance of the notes; is that correct?

18 A. No, it isn't correct.

19 Q. Okay. I'd like to know where in the
20 record you saw evidence that Mr. Perelman removed a
21 director of the Marvel board during this period?

22 A. Have you ever seen -- well, I'm going to
23 answer your question. Have you ever seen a
24 sheepdog corral sheep? You know what happens?
25 They don't -- the dog doesn't go bite the sheep.

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2 The dog looks at the sheep and the sheep goes where
3 it's supposed to go. That's a perfect analog to
4 what the results in this case suggest happened.

5 Q. Okay. But you understand --

6 A. There's no thumbscrew involved, there's
7 a look.

8 Q. You understand that Mr. Perelman did not
9 remove and replace a single director of the Marvel
10 board in connection with the issuance of these
11 notes?

12 A. And I have --

13 Q. Is that correct?

14 A. That's correct.

15 Q. Okay.

16 A. And I assert that's because he exercised
17 the power he had.

18 Q. Now, there's nothing wrong -- there was
19 nothing wrong, was there, in your view, in
20 Mr. Perelman borrowing money and using his Marvel
21 stock as collateral for that loan?

22 A. That's correct. If that were all he
23 did, we wouldn't be here.

24 Q. And Mr. Perelman, he didn't have any
25 duty to share the proceeds of such a borrowing with

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2 Marvel, did he?

3 A. No.

4 Q. In fact, he could have, instead of
5 borrowing money and using the stock as collateral,
6 he could have just gone out and sold the stock to
7 anybody he wanted to get the money and Marvel
8 would've have nothing to say about that; is that
9 true?

10 A. True.

11 Q. Now, you go on a little further down in
12 this paragraph to say that, As an independent
13 director, it would be obvious to me that Perelman
14 could not be expected to discharge his fiduciary
15 duty to Marvel as both its controlling shareholder
16 and a director, while at the same time seeking to
17 restrict Marvel's ability to conduct its affairs in
18 order to sell the notes and secure the net proceeds
19 therefrom for himself personally, without any
20 benefit to Marvel.

21 What you're saying there is, if I
22 understand it, it would have been obvious to you
23 that Mr. Perelman --

24 A. Was conflicted.

25 Q. Right. That's what you're saying,

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2 right?

3 A. Was conflicted.

4 Q. If it would've been obvious to you that
5 he was conflicted, is it fair to say that it
6 probably would've been obvious to the people who
7 were the actual independent directors at that time?

8 A. I'd say it should have been obvious to
9 them.

10 Q. By the way, do you know who the
11 directors of Marvel were during this period of
12 time?

13 A. I remember a list of them. Frank
14 Gifford was one of them.

15 Q. Do you know Mr. Gifford?

16 A. No.

17 Q. Other than seeing him on Monday night
18 football for a number of years and kicking for the
19 Giants or whatever he did for the Giants?

20 A. No.

21 Q. Do you personally know any of the other
22 gentlemen on the board?

23 A. No, I don't.

24 Q. Do you know Michael Fuchs?

25 A. I think I do.

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2 Q. Did you know Michael Fuchs was the CEO
3 of Home Box Office for a period of time, that
4 Michael Fuchs?

5 A. I wonder if I've got the right guy. Do
6 you know Michael Fuchs?

7 Q. I do know Michael Fuchs and my question
8 to you is, don't you and he sit on the board of
9 trustees of The New School together?

10 A. That's what I was going to ask you.

11 Q. Right. That's your belief?

12 A. That's my belief.

13 Q. And based on your dealings with
14 Mr. Fuchs, do you have any reason to question his
15 honesty and his integrity?

16 A. No, not his honesty or his integrity.

17 Q. Do you have any basis to question the
18 honesty or integrity of any of the members of the
19 Marvel board of directors?

20 A. Was Mr. Fuchs on this board when the --
21 when the --

22 Q. Yes, he was.

23 A. I see. I didn't remember his name on
24 the minutes.

25 Q. I don't know if he's on the minutes or

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2 not, but he was on the board.

3 A. I see.

4 Q. Do you have any basis to question the
5 integrity or honesty of any of the independent
6 directors of Marvel --

7 A. No, I do not have any basis to question
8 the honesty or integrity of any of the board
9 members.

10 Q. Now, a little further on, next
11 paragraph, you say, In my experience, it is
12 commonplace for conflicted directors to disclose
13 the nature of their conflict to those on the board
14 not so conflicted.

15 Do you have any reason to believe that
16 Mr. Perelman didn't disclose any potential
17 conflicts that he might have had to the Marvel
18 board?

19 A. I have no reason to form an opinion
20 about that.

21 Q. Do you have any reason to believe that
22 when the Marvel board was required or requested to
23 take action on any matter where a potential
24 conflict with Mr. Perelman existed, that
25 Mr. Perelman and Mr. Drapkin and Mr. Bevins didn't

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2 recuse themselves from the deliberations as you
3 indicate should be done?

4 A. Well, I have a reason to believe it
5 didn't happen because I asked to see the minutes of
6 all the meetings during this relevant period, and
7 there's nothing in the minutes to suggest that this
8 transaction was handled in the way I think it
9 should have been handled.

10 Q. Well, it's different. You're answering
11 a question I didn't ask. Now, let's go back.

12 You say in your answer that in these
13 conflict situations, there's two duties that the
14 conflicted director has. One is to tell the other
15 directors that he's got a conflict, right?
16 Correct?

17 A. Right.

18 Q. And the second is, you talk about a duty
19 to recuse, right?

20 A. Yes.

21 Q. By the way, where does that duty, this
22 duty to recuse come from? Is there a statute that
23 says that? Is there a common law case that says
24 that?

25 A. Well, you know, they -- as well as I do,

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2 that if you participate in a conflicted transaction
3 under Delaware law, there's an absolute fairness
4 test. The business judgment rule is removed from
5 the case, so...

6 Q. That's what you're referring to?

7 A. That's what I'm referring to.

8 Q. Okay. And my question to you was, do
9 you have any facts to suggest that in any situation
10 where the Marvel board was required or requested to
11 take action and the potential conflict between
12 Mr. Perelman and Marvel existed, then Mr. Perelman,
13 Mr. Drapkin and Mr. Bevins didn't recuse themselves
14 from the board's deliberations?

15 A. Yes, these three transactions.

16 Q. Which three?

17 A. The board, in my judgment, was required
18 to be presented with the facts and take action, and
19 they didn't do it. At least they didn't do it
20 insofar as the minutes of the meetings that were
21 held during this period disclosed to me.

22 Q. And what was the action that the board
23 was required to take with respect to the issuance
24 of the holding company notes?

25 A. Was to require to evaluate the conflict

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2 of interest and the impact of these covenants, and
3 indeed, the whole transaction on this company
4 before it participated in the offering.

5 Q. And that participation consisted of
6 what? Just so we are clear on that.

7 A. Well, we've been over that. It
8 consisted of leading the road show. Bevins'
9 testimony suggests he led the road show.

10 Q. Uh-huh.

11 A. The general counsel gave a very complete
12 financing opinion, including a 10b-5 that couldn't
13 have been given, by the way, by any responsible
14 lawyer if these covenants -- if Marvel's board felt
15 free to ignore the covenants. And so, that's in
16 the report.

17 But so, I think that -- that you're -- I
18 mean, this gets to the crux, the central core of
19 this case, which is the fact, there's no evidence
20 that the board considered the impact on Marvel of
21 this transaction or series of transactions.

22 Q. Let me ask you -- let's put aside the
23 notes, okay, the note transactions, for just a
24 minute.

25 A. Okay.

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2 Q. Are you aware of any other instance
3 where the board of Marvel was required or requested
4 to take any action and a potential conflict existed
5 with Mr. Perelman where Perelman and Drapkin and
6 Bevins didn't recuse themselves, putting aside the
7 note transactions?

8 A. I'm not aware of anything.

9 Q. Now, going to the note transactions.
10 Your belief is that as a practical matter, Marvel
11 and its management and its directors agreed that
12 Marvel would be restricted as provided in the note
13 covenants; is that right?

14 A. Yes. De facto, it was -- these
15 restrictions were accepted.

16 Q. Is there any reason you can think of,
17 based on everything you've read in this case and
18 your many years of experience in the law and in
19 business, why were that so, Marvel wouldn't simply
20 be a party to the contract?

21 A. Which contract?

22 Q. The indentures.

23 A. Well, they weren't issuing the notes.
24 And the noteholders were satisfied that 80 percent
25 control gave the power necessary to cause the sub

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2 to comply.

3 Q. But if the sub was agreeing to be bound
4 by the notes, why didn't they just sign the
5 contract?

6 A. I don't know, maybe no one asked them.

7 Q. Would've made more sense, though,
8 wouldn't it, just as a structural matter, if Marvel
9 was to be bound by these provisions, for it to sign
10 on the dotted line and say, I'm a party to the
11 contract and I'm bound?

12 A. I don't think so.

13 Q. As a lawyer advising Marvel under these
14 circumstances, Marvel management coming to you,
15 saying, We're going to be bound by these
16 provisions, shouldn't we be a party to the
17 contract? You'd say what?

18 A. I would say, I think my general instinct
19 is to, don't sign anything you're not required to
20 sign, especially if it's --

21 Q. Why is that?

22 A. Huh?

23 Q. Why would you tell them not to sign if
24 they weren't required to?

25 A. Well, no one's asked them to sign.

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2 Q. But why would you tell them that?

3 A. I would tell them it's not generally
4 wise to volunteer things.

5 Q. Why is that?

6 A. You might get killed.

7 Q. It might give you the opportunity to
8 say, I'm not bound if I'm not a party to the
9 contract; that's one possibility, isn't it?

10 A. If that was the possibility, they had to
11 say it to the noteholders, they had to say it to
12 the indenture trustee, they had to say it to the
13 SEC and to all the other investors in this company.
14 Without any question, that's the most material --

15 Q. What is it that they had to say?

16 A. They had to say, We, Marvel, although
17 our parent has agreed to cause us to comply with
18 these restricted covenants, which can hurt our
19 business, we want you to know that we have informed
20 the noteholders, we are not bound by them and we
21 are not necessarily going to allow them to be
22 imposed on us, and we'd have to say that to the --
23 in our filings to the SEC. Otherwise, we're
24 materially misleading shareholders.

25 Q. Let's say the holding companies were the

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2 most direct parents to Marvel, right, in the whole
3 corporate chain, because they held the stock --

4 A. I think so.

5 Q. -- directly. And then at the top of
6 that chain is Mr. Perelman, who indirectly, through
7 various entities, indirectly held the stock of the
8 holding companies, which held the stock of Marvel,
9 right?

10 A. I don't know how he held that stock.

11 Q. But you understood that there were many
12 upstream companies besides the Marvel holding
13 companies, right?

14 A. Yes.

15 Q. Like --

16 A. I didn't figure it all out.

17 Q. No, of course not.

18 A. MacAndrews & Forbes is one of them.

19 Q. So these -- is it the case that if any
20 of the upstream parent companies to Marvel would
21 enter into a contract that might have some impact
22 on Marvel, that Marvel was obligated to tell the
23 world that it wasn't contractually bound; is that
24 your view?

25 A. I can't answer your hypothetical. All I

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2 can answer is, this was a -- Marvel had a tight
3 nexus to the issuance of this debt. It --
4 everything it did to facilitate the issuance of
5 this debt, in totality, adds up to behavior
6 substantially equivalent to issuing the debt
7 itself.

8 Q. Is everything --

9 A. But it didn't get any benefit from the
10 debt it issued; it all went to Mr. Perelman. And
11 what I'm saying, in this circumstance, being a
12 public company and having to enter into filings, it
13 had to make complete material disclosure, accurate
14 disclosure about material facts.

15 And I'm just saying that a material fact
16 would be whether or not they're going to consider
17 themselves bound by these covenants. And I think
18 the record indicates what they thought about that,
19 and the lawyering that wrote these disclosure
20 documents, in my judgment, evinces an understanding
21 that Marvel's going to comply.

22 Q. You didn't see any disclosure that said
23 that Marvel was bound by the holding company
24 indentures, did you?

25 A. Well...